



This project is funded by
the European Union



Институт за човекови права



REPORT

HUMAN RIGHTS SITUATION IN THE REPUBLIC OF NORTH MACEDONIA

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Report by the Institute for Human Rights

Published by:
Institute for Human Rights

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Skopje, 2020



This publication is created with the financial support of the European Union. The content of the publication is the sole responsibility of the Institute for Human Rights and does not necessarily reflect the official views of the European Union.

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INTRODUCTORY REMARKS

The Institute for Human Rights (IHR) is a civic association whose activities are aimed at promotion, advancement and protection of human rights and freedoms. IHR achieves its commitments through continuous education, analysis and research of current situations, as well as through advocacy and organization of professional discussions and debates, intended for the general public. The need for such an engagement of the civic associations, was especially visible during the recent period, having in mind the numerous events that had a huge effect in all spheres of life and especially in respect of the observance of human rights in our country.

The COVID-19 pandemic has caused a global health, economic and social crisis, which has caught up with the Republic of North Macedonia (RNM) in the specific conditions of pre-election activities, dissolved Parliament and a technical Government, composed by the then leading coalition and opposition. The state of emergency, caused by the corona virus threat to public health and the economy, as well as the need for undertaking urgent measures, were the reasons due to which, the technical Government decided to declare a state of emergency in our country. Bearing in mind the nature and seriousness of the situation, it was obvious that the introduced measures did inevitably affect peoples' rights and freedoms, as an integral and indispensable part of any democratic society.

This report presents the human rights situation in the Republic of North Macedonia, through the prism of the work of the Institute for Human Rights and it is aimed at establishing the key aspects of the respect (or lack thereof) for human rights in our country.

As part of its operations this year, the Institute for Human Rights has implemented numerous activities, aimed at the promotion, advancement and protection of human rights. These activities are discussed in further detail throughout this Report, and therefore, this document represents a comprehensive review of the most pressing problems related to the observance of human rights, based on the findings identified during the work of the Institute for Human Rights.

This Report is divided in three main parts. The first part deals with the prevention and protection against discrimination. The second part contains a summary of the main findings by the Institute for Human Rights, regarding the respect for human rights during a pandemic. The third chapter discusses the Primary Legal Assistance Program of the Institute for Human Rights. The Report also contains an Annex, with a review of selected international and domestic reports on the human rights situation in our country, introducing the findings of certain international and national entities and providing a wider perspective.



1

**PREVENTION AND PROTECTION
AGAINST DISCRIMINATION**

THE LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION – REVOCATION AND ADOPTION OF A NEW LAW

In May 2019, after a long and serious debate, the Parliament adopted the Law on Prevention and Protection against Discrimination in the Republic of North Macedonia¹ (RNM).



The new Law introduced several novelties, including expanding the grounds that citizens can refer to when seeking protection against discrimination, including, for the very first time, the grounds of sexual orientation and gender identity, as well as the professionalization of the Commission for Protection Against Discrimination and its mandate.

Following the prescribed legal procedure, the Parliament adopted the Law during the session held on March 11, 2019. On that occasion, the then President Ivanov has exercised his constitutional right and decided not to sign the decree for the proclamation of the Law, pursuant to Article 75 of the Constitution.

Hence, in accordance with the prescribed procedure, the Law was returned to be further deliberated by the Parliament and then, on May 16, 2019, the Law was adopted again, without any changes or amendments to its text. In the meantime, as a result of the Presidential elections in the country and the election of a new President of the Republic, the conditions were met for the decree for the proclamation of the Law to be signed for a second time, this time by the newly elected President Pendarovski.

Following the original presidential decision not to sign the decree, the Law was returned to the Parliament and then adopted for the second time, again with a simple majority, i.e. with 55 votes 'for', out of the total number of 101 Members of Parliament who were present at the session.

After the President of the Republic signed the decree for the proclamation of the Law and after it was published in the Official Gazette of RNM, the precedent Commission for Protection against Discrimination challenged the constitutionality of the Law before the Constitutional Court.

In the challenging writ, in the capacity of an applicant, the Commission claimed that the Law was adopted without the constitutionally required majority and that the Law could not have come into effect, because one needed at least 61 votes for its adoption, i.e. an absolute majority.

With a majority of the votes of the Constitutional judges, the Court decided to initiate a procedure to examine the constitutionality and lawfulness of the Law on Prevention and Protection against Discrimination, by means of a Decision number 115/19.²

1 Law on Prevention and Protection against Discrimination, Official Gazette of RNM, number101/2019..

2 Constitutional Court of RNM. (2020). Decision number 115/2019. Available at: <http://ustavensud.mk/?p=18839>

Following the decision of the Court to act upon the initiative for the assessment of the constitutionality of the Law on Prevention and Protection against Discrimination, the Blueprint Judicial Reforms Group published a type of response and demand.³

After almost four months of reviewing the initiative for the assessment of the constitutionality and lawfulness of the Law on Prevention and Protection against Discrimination, during its 14th session held on May 14, 2020, the Constitutional Court passed a decision for the revocation of the Law on Prevention and Protection against Discrimination.

The decision of the Constitutional Court to revoke this Law was enacted in a specific moment of a declared state of emergency, because of the global corona virus pandemic, technical government and dissolved Parliament. As a result of this situation, following the completion of the parliamentary elections, it was the new composition of the Parliament that was deciding on the adoption of a new Law on Prevention and Protection against Discrimination, which means that there was a certain time gap between the revocation of the old and the enactment of the new Law.

The fact that this Law was revoked means that the Law was rightfully part of the legal circulation in the country and its transitional provisions entered into effect, which meant that as of the day of entry into force of this new Law, the provisions of the previous Law on Prevention and Protection against Discrimination shall no longer be applicable.⁴

In such circumstances and due to the legal void caused by the revocation of the Law on Prevention and Protection against Discrimination and nonexistence of a valid and applicable Law on Prevention and Protection against Discrimination, judges in the regular courts need to intensively refer to the European Convention on Human Rights, which, after it has been ratified on April 10, 1997, became an integral part of the legal system of our country.

In addition, considering the fact that prohibition of discrimination is a constitutional category, the protection of which is guaranteed by the Constitutional Court, this situation emphasizes the importance of the Constitutional Court during the forthcoming period, with the Court being obliged to act and protect the human rights and freedoms of the citizens, related to the prohibition of discrimination of citizens based on their sex, race, religion, nationality, social status or political convictions.⁵

Due to the process preceding the establishment of the new Parliament, the process of enactment of the new Law on Prevention and Protection against Discrimination was delayed. Civic associations have been actively calling for the adoption of the Law by the Parliament, as a matter of priority.⁶

! The new Law on Prevention and Protection against Discrimination⁷, which is almost identical to its predecessor, was enacted following the regular legislative procedure at the Parliament in October 2020 and it was published in the Official Gazette on October 30, 2020⁸, entering into effect on the same day.

The new Law has confirmed the expansion of the grounds for discrimination, adding sexual orientation and gender identity to the overall scope of protection. As a result, Article 5 of the Law now provides for the following grounds for discrimination: “race, skin color, national or ethnic origin, sex, gender, sexual orientation, gender identity, belonging to a marginalized group, language, nationality, social background,

3 Blueprint Judicial Reforms Group. (May 15, 2020). Reaction in Response to the Revocation of the Law on Prevention and Protection against Discrimination. Available at: <https://www.ihr.org.mk/mk/novosti/reakcija-po-ukinuvanje-na-zakonot-za-sprechuvanje-i-zashtita-od-diskriminacija>

4 Law on Prevention and Protection against Discrimination, Official Gazette, number 50/2010, 44/2014, 150/2015, 31/2016 and 21/2018.

5 Blueprint Judicial Reforms Group. (2020). Analysis - Revocation of the Law on Prevention and Protection Against Discrimination, available [HERE](#).

6 Blueprint Judicial Reforms Group. (July 11, 2020). Declaration for Priority Adoption of the Law on Prevention and Protection against Discrimination. Available at: <https://ihr.org.mk/mk/novosti/deklaracijata-za-prioriteno-donesuvanje-na-zakonot-za-sprechuvanje-i-zashtita-od-diskriminacija>

7 Ibid.

8 Law on Prevention and Protection against Discrimination, Official Gazette, number 258/2020

education, religion or religious beliefs, political affiliation, other types of beliefs, disability, age, family or marital status, property status, health condition, personal and social status or any other grounds”.



The Law introduced segregation and intersectional discrimination, as specific and separate types of discrimination. The Law also provided for the revocation of court fees for cases related to establishment and protection against discrimination, aimed at improving access to justice for the citizens.

The criteria for the selection of members of the Commission for Prevention and Protection against Discrimination have also been changed and prescribed by the Law, in order to improve the expertise and quality of its members. In addition, the Law provides detailed conditions for dismissal of the members. The Commission's authority has been expanded and now it can act as an independent Commission for Prevention and Protection against Discrimination, that is, as a financially completely independent entity, similar to the Ombudsman. Regarding the Commission, one should also mention that during the application of the revoked Law on Prevention and Protection against Discrimination, the Commission for Prevention and Protection against Discrimination was not established for a whole year, although the Parliament had the legal obligation to select the members of the Commission and thus provide for implementation of the Law and functionality of the entity, which is essential to the promotion of the equality of citizens.



The new Law prescribes a shorter deadline for decision making in relation to received complaints and instead of 90 days, as provided for by the previous law, the decision making deadline is now 60 days. With respect to the burden of proof, the old, i.e. new legal provisions are obliging the applicanta⁹ and plaintiff¹⁰ to present only the facts that provide for the probability of the discrimination claim, whereas the burden of proof and the responsibility of presenting evidence is shifted to the opposing side.

The Law also provides for **claims of public interest, i.e. actio popularis**. In the past, in order to file a complaint on behalf of certain civic associations, organizations etc., seeking protection against discrimination of a single person or a group of persons, one had to provide for a specific consent by the victim/victims, before actually initiating the procedure.

Apart from the evidence prescribed by the Law on Litigation, the Law on Prevention and Protection against Discrimination introduces a new type of evidence, i.e. one may now also use statistical data and/or data obtained through situational testing, for the purpose of establishing discrimination.



The implementation of this Law, which has proper theoretical foundations, as one of the key requirements by the European union as well, should provide for the principles of equality, prevention and protection against discrimination in the observance of human rights and finally, providing the citizens with an improved, more professional and efficient protection of their fundamental rights and freedoms.

⁹ Article 26, Law on Prevention and Protection against Discrimination, Official Gazette, number 258/2020.

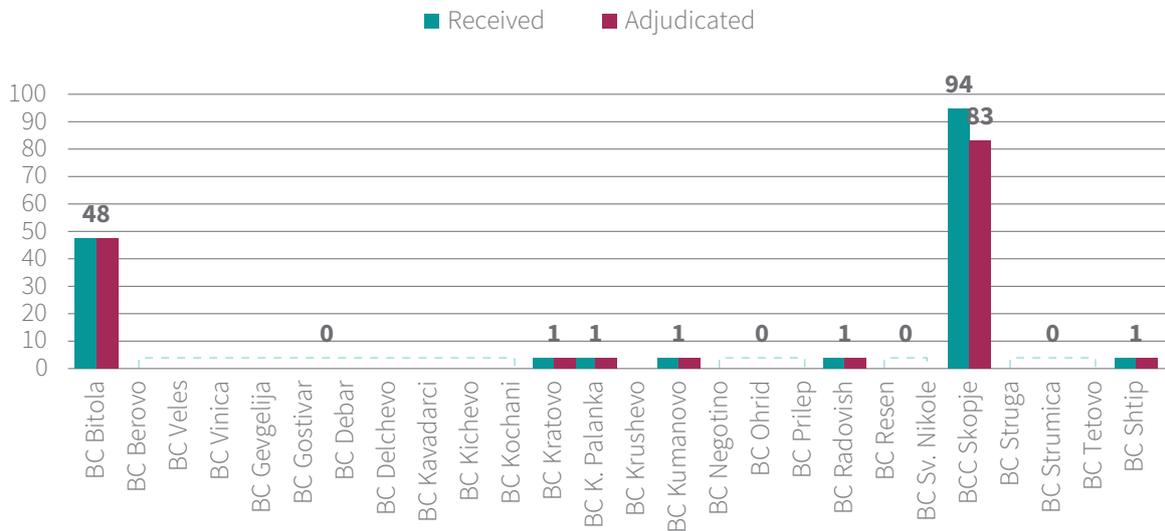
¹⁰ Article 37, Law on Prevention and Protection against Discrimination, Official Gazette, number 258/2020.

STATISTICS ON DISCRIMINATION CASES IN DOMESTIC COURTS

The Institute for Human Rights has filed Requests for access to information of public character with all basic trial courts in the Republic of North Macedonia, in order to obtain answers to the questions: **how many discrimination cases on any grounds were there in the courts during the last 5 years and whether the courts maintain some sort of statistics / registries, regarding the grounds of discrimination that people have been referring to when seeking judicial protection.**

We received answers from 18 basic courts, while 8 basic courts did not provide an answer within the legally prescribed deadline of 20 days.

As far as the statistics from the courts that gave us an answer are concerned, there have been 147 complaints filed during the period between January 1, 2015 and June 31, 2020. 136 of those cases have been decided. Only 9 cases filed with the Basic Civil Court in Skopje remain undecided.



Discrimination cases 2015-2020

Considering these numbers, one may draw the conclusion that the **majority of the discrimination cases, on all grounds, are being adjudicated in the courts of the larger cities (mainly by the basic courts in Skopje and Bitola)**. The imposing question is whether people in the smaller cities are discriminated against less often, or whether they don't have the courage to file a complaint for discrimination, fearing possible additional stigmatization, or they are not sufficiently informed about the possibilities and mechanisms for protection against discrimination, or simply, they do not trust the institutions. Furthermore, the percentage of decided cases in the courts that have been adjudicating these cases, is rather high.

In addition, **basic courts do not maintain separate registries/statistics regarding the various grounds for discrimination (such as race, skin color, sex, gender, sexual orientation, gender identity, belonging to a marginalized group etc.) that people invoke when seeking judicial protection**. It was pointed out to us that the registries that are maintained within the ACMIS system, are prescribed and established by the courts' Rules of Procedure and therefore the courts are not obliged to maintain such a register (pursuant to the old and new Law on Prevention and Protection against Discrimination, all institutions are required to collect information on the grounds and areas of discrimination).

Cases are being recorded only according to the area of discrimination, i.e. in the section for labor disputes, the section for property disputes, low value disputes, family disputes and disputes related to warrants for payment. During the 2015-2018 period, any complaints on these grounds have been recorded as "other types of obligatory relations", with a further remark – discrimination.

INITIATIVES FOR ESTABLISHMENT OF DISCRIMINATION FILED BY THE INSTITUTE FOR HUMAN RIGHTS WITH THE CONSTITUTIONAL COURT

Article 9 of the Constitution of the Republic of North Macedonia provides for the rights of non-discrimination and equality of the citizens before the Constitution and the law, as formally different, but intrinsically related concepts. Article 110 of the Constitution provides an exhaustive list of the competencies of the Constitutional Court. Amongst others, the Court has to protect the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity, as well as to the prohibition of discrimination against citizens on the grounds of sex, race, religion or national, social or political affiliation.

The Institute for Human Rights, as a civic association, is working on the promotion, advancement and protection of human rights and freedoms. There are numerous activities implemented by the Institute through its projects, including protection against discrimination, recognition of discriminatory actions and their prevention. **So far, the Institute for Human Rights has raised a couple of initiatives with the Constitutional Court of the RNM, so as to challenge certain legal provisions that contain discriminatory elements that are contrary to the Constitution, as the supreme legislative act.**

The first initiative was raised back in 2019, asking for an assessment of the constitutionality of Article 13, regarding the wording “of a husband and wife” of Article 100a, paragraph 5, item 7 of the Family Law.¹¹ Namely, the law defines the extramarital relationship as: “The living community of a husband and a wife, which has not been established according to the provisions of this law (out of wedlock) and has endured at least one year, is equal to the marriage community in terms of the right to mutual sustenance and the property acquired during the time of endurance of that community.” Consequently, same gender individuals (couples), who, like any individuals of different genders, have been living together for more than a year in a (factual) extramarital community, are automatically excluded from enjoying these rights, on the basis of their sexual orientation. It is obvious that the challenged Article 13 of the Law prescribes different treatment on the grounds of sexual orientation, in regards to the mutual property rights of the couples, engaged in extramarital relationships. What remains to be proven is that this difference in the treatment, is contrary to the indicated constitutional provisions, considered in parallel to the provisions of the ECHR.¹² Article 40 of the Constitution undoubtedly shows that the Constitution does not define either marriage or family, or extramarital relationships and allows for the legal relations related to these institutes to be further regulated by specific laws. Accordingly, one may certainly claim that the Constitution does not strictly define either marriage or extramarital relationships, as communities of a man and

11 Family Law, Official Gazette of RM, number 80/1992, 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012, 44/2012, 38/2014, 115/2014, 104/2015 and 150/2015.

12 Pursuant to Article 14 of the European Convention on Human Rights, the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. One may find the same provision in Article 1 of the Protocol 12 to the Convention

a woman. Therefore, from a constitutional perspective, same gender marriages or same gender extramarital relationships are not prohibited.

The point is that the Constitution does neither provide only for marriages between two individuals of different gender, nor for extramarital relationships between two individuals of different gender. Consequently, the existence of same gender marriages and the existence of extramarital relationships would not be contrary to the Constitution. Therefore, the enactor of the Law could not justify the difference in the treatment in Article 13, by claiming that the Constitution provides only for extramarital relationships between individuals of a different gender, simply because the Constitution does not prescribe anything like that.

In legal reality, Article 6, paragraph 1 of the Family Law reads as follows: “Marriage is a living community of a man and a woman regulated by law, which provides for the realization of the interests of the spouses, the family and the society”. There is no need to prove the undeniability of the fact that such a traditional concept of marriage, as chosen by the legislator, is fully compatible with the authority provided by Article 40, paragraph 2 of the Constitution. Furthermore, there is no doubt that the European Court of Human Rights, in several of its judgments, has clearly indicated that “...national authorities are in the best position to evaluate and respond to the needs of the society in this field, bearing in mind that marriage as such, has deeply rooted social and cultural connotations, which, to a large extent, differ from one society to another... (..) ..and that Article 12 of the Convention does not oblige the State to provide the same gender partners with the option to enter into marriage” (Schalk and Kopf v. Austria, no.30141/04).

Hence, the inability of same gender partners to enter into a marriage, pursuant to our legislation, is a clear legal situation, which cannot be questioned on the basis of its concordance with the Constitution alone, but also in relation to the Convention and case law of the Court in Strasbourg: - there is no discrimination, i.e. inequality of citizens before the Constitution and the law, if same gender partners are not allowed to enter into marriage. Equally so, it would not be against the Constitution, if the legislator were to decide, if such a decision is to be adopted at all, to allow marriages between same gender partners.

However, when the legislator has already decided that a marriage should be an exclusive community between a man and a woman, the regulation of any legal consequences related to same gender partners who live together in an extramarital relationship (out of wedlock), has to satisfy the requirements of the principle of equality of the citizens before the Constitution and the law, from the perspective of the right to respect of private and family life and equal treatment in the same circumstances, regardless of the sexual orientation of the person. If same gender couples are not allowed to enter into marriage, it does not automatically mean that they do not enjoy their right to family life in a same gender community, like any other heterosexual couples in the same situation, without discrimination on the grounds of sexual orientation. Namely, Article 25 of the Constitution guarantees the right to respect and protect one’s private and family life, which coincides with the formulation of Article 8 of the Convention, in the same way as Article 9 of the Constitution fully and substantively coincides with Article 14 of the Convention and Article 1 of Protocol 12.

The second initiative by the Institute for Human Rights was raised in October 2020, so as to assess the constitutionality of Article 44, paragraph 2 of the Law on Social Protection, and more specifically its wording “but not older than 65 years of age”.¹³ Namely, the Law provides that any person older than 26 years of age, but not older than 65 years of age, may attain the right to receive a disability allowance and it is to be utilized regardless of the age of the beneficiary. This provision discriminates people depending on their age and violates the right not to be discriminated against and the equality of citizens as provided in Article 9 of the Constitution. Amongst other, the Law on Social Protection contains provisions according to which, beneficiaries have the right to social protection that is based on

¹³ Law on Social Protection, Official Gazette, number 104/2019, 146/2019 and 275/2019.

equal and concurrent treatment and also provide for prohibition of discrimination, with age being one of the specifically listed grounds (Article 16).

The unequal treatment of persons with disabilities based on their age in the challenged provision of the Law, in principle, poses the question of its discrepancy with Article 9, paragraph 2 of the Constitution, regardless of the fact that paragraph 1 of that article does not mention age as a possible ground for discrimination. It is indisputable that this prescribed provision of the Law on Social Protection provides for different treatment based on age.

First of all, one should note that paragraph 2 of Article 44 of the Law, makes the following distinction:

- Attaining the right to a disability allowance, and
- Utilizing that right.

In doing so, the attainment (filing an application to enjoy the right) is a subject to an age limit of 65 years of age, whereas there are no age limitations or restrictions regarding the utilization of this right. The latter has no effect on the possible elimination of the disparity of the treatment: one cannot claim that all persons with disabilities are being treated the same when it comes to the utilization of this right, regardless of their age: - in order for them to actually get the allowance, first of all they have to attain this right, but they won't be able to do so, if older than 65 years of age. In fact, the very last portion of Article 44, paragraph 2, regarding the utilization of this right is obsolete, since a person who cannot attain the allowance right, cannot utilize it either. On the other hand, naturally, a person who attained this right can utilize it by the end of his or her life, because the allowance is granted in cases of irreversible disability (Article 44, paragraph 1). Even if, in theory, the condition of the person changes, the allowance would be discontinued, only when the disability that provided the grounds for the attainment of this right ceases to exist.

The challenged provision unequivocally excludes people older than 65 years of age from the possibility to attain the right to an allowance due to disability, although they have some kind of disability as prescribed in Article 44, paragraph 1 of the Law, which would otherwise provide for such an allowance, regardless of whether the disability occurred before or after the person turned 65 years of age – therefore, disabled individuals older than 65 cannot file an application to attain the right to disability allowance. These disabled individuals who have already turned 65 and cannot attain disability allowance, should be rightfully compared with disabled individuals younger than 65 years of age, who can attain this right and consequently enjoy it for the rest of their lives. Hence, it can be said that both categories have the same disability status, but they are placed in different situations with respect to attaining and utilizing the right to an allowance, only because of their age.

Age, as a condition to attain the right to disability allowance provided for in the challenged provision, was prescribed precisely with this Law, for the very first time back in 2019. The option for disability allowance also existed within the former legislation, but in a different format – as an allowance for mobility and blindness¹⁴ and allowance for deafness (Article 84b) and age was never a prerequisite for attaining those rights, but of course, only the disability of the person.

Having in mind all of the above, it remains to be seen what would be the decision by the Constitutional Court regarding these initiatives and whether the Court will consider the circumstances of our national legislation and the case law of the European Court of Human Rights in Strasbourg, with respect to cases of a detected discrimination and thus a violation of the guaranteed human rights.

¹⁴ Article 84a, Law on Social Protection, Official Gazette number 79/09, with all additional changes and amendments, inclusive of Official Gazette number 51/18.



2

**HUMAN RIGHTS
DURING PANDEMICS**

RULE OF LAW AND DEMOCRATIC PRINCIPLES DURING A STATE OF EMERGENCY¹⁵

The corona virus COVID-19 pandemic has caused a global health, economic and social crisis, which has caught up with the Republic of North Macedonia (RNM) in the specific conditions of pre-election activities, dissolved Parliament and a technical Government, composed by the then leading coalition and opposition.

The state of emergency, caused by the corona virus threat to public health and the economy, as well as the need for undertaking urgent measures, were the reasons due to which the technical Government decided to declare a state of emergency in our country.

In the absence of a separate law regulating the state of emergency and with a dissolved Parliament, pursuant to Article 125 of the Constitution, the President of RNM, on March 18, 2020, has declared a state of emergency for the first time, in duration of 30 days. Following the expiry of the initial 30 days, the President declared another state of emergency for another 30 days.

By declaring a state of emergency, one activates Article 126 of the Constitution¹⁶ and Article 10 of the Law on Government¹⁷ according to which, during a state of war or emergency, if there is no possibility to summon the Parliament, the Government, in accordance with the Constitution and the law, enacts decrees with full legal effect regarding any issues that would otherwise fall under the competence of the Parliament. This authority, providing the Government with the possibility to enact decrees with full legal effect, is applicable until the end of the state of war or emergency.

In its toolkit for Member States for the respect of democracy, rule of law and human rights during the sanitary crisis related to COVID-19¹⁸, the Council of Europe has emphasized that it would be acceptable, during states of emergency, for governments to be provided with the authority to enact decrees with full legal effect, as long as those authorities are time limited. Any measures provided for by those decrees with full legal effect, should be time limited as well.¹⁹

During a state of emergency, the common push and pull system, i.e. the division of powers between the legislative, executive and judicial branch is temporarily replaced by concentrating the legislative and executive authorities into a single entity – the Government. Having in mind that RNM had a technical Government during this period, the competencies of the legislative and executive branch of government have been transferred to the temporary Government, which had to face the challenges and try to protect the population from the causes and consequences of the pandemic.

15 Rule of law and democratic principle during a state of emergency. An article published as part of the project “Human Rights for All”, Institute for Human Rights. Available at: <https://www.ihr.org.mk/mk/novosti/vladeenjeto-na-pravoto-i-demokrat-skite-nachela-vo-vreme-na-vonredna-sostojba>

16 Article 126, Constitution of the Republic of North Macedonia.

17 Article 10, Law on the Government of the Republic of North Macedonia, Official Gazette number 59/2000, 12/2003, 55/2005, 37/2006, 115/2007, 19/2008, 82/2008, 10/2010, 51/2011, 15/2013, 139/2014, 196/2015, 142/2016 and 140/2018 and number 98/2019.

18 Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>

19 Ibid page 4

In the absence of a separate law that would regulate states of emergency, legal actions, authority and documents that may be adopted, the Constitution is rather vague when it comes to those issues. Namely, one may question the scope, as well as the limits of the decrees with full legal effect adopted by the Government and which are supposed to be related to the declaration of the state of emergency and to the urgent measures

that are to be taken in that regard. In addition, the Council of Europe recognizes that the main social, political and legal challenge that countries are faced with, is how to diligently respond to this crisis, at the same time making sure that the measures they undertake do not undermine the true, long-term interest of preserving the European fundamental values of democracy, rule of law and the protection of human rights.²¹

In several published studies, relevant reports and guidelines, it is noted that during times of emergency, one has to provide for the respect of the rule of law and democratic principles. Therefore, in adopting any kind of measures, one has to respect the principles of legality, proportionality, necessity and the principle of non-discrimination.²²

The legality principle provides that every new decree with full legal effect adopted during the state of emergency, has to be in accordance with the Constitution and the law and has to be subject to review by a relevant entity, in this particular case by the Constitutional Court.

It is important for judges to be capable of reviewing the most serious restrictions of human rights, introduced by decrees with full legal effect. The Council of Europe provides for the possibility of postponement, acceleration or collective action in relation to certain categories of cases, and the preliminary judicial authority, in some cases, may be replaced by an ex-post judicial review.²³

“During the past year, the civic associations have produced a large number of reports, pertaining to the rights of people during pandemics, but also regarding the overall status of the judiciary, attaining certain rights at the local level and corruption. Furthermore, many of the civic organizations have delivered their reports to various international entities, so as to inform them about the current human rights situation in the country.*”

20 Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

21 Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>

22 See Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>; United nations. (2020). COVID-19 and Human Rights: We are all in this together (Policy brief). Available at: https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf; BiEP-AG. (2020). The Western Balkans in Times of the Global Pandemic (Policy brief). Available at: <https://biepag.eu/wp-content/uploads/2020/04/BiEPAG-Policy-Brief-The-Western-Balkans-in-Times-of-the-Global-Pandemic.pdf>; Kolozova et al. (2020). The State of Democracy in North Macedonia in the Times of the Covid-19 Pandemic (Policy brief). Available at: <http://www.isshs.edu.mk/wp-content/uploads/2020/04/The-State-of-Democracy-in-North-Macedonia-in-the-Times-of-the-Covid-19-Pandemic.pdf>

23 Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>

The principle of proportionality means that one should adopt measures that would provide for their legitimate purpose. Acting during crisis means making fast decisions, which, although usually adopted with the best intentions in mind, do not exclude the possibility of causing unintended negative consequences. Therefore, before actually adopting any measures, the Government is expected to analyze the existing and relevant legal grounds and to decide, whether such measures that restrict certain human rights and freedoms are indeed necessary, in comparison with some other less strict alternatives.

Furthermore, although increased restrictions of certain rights might be fully justified during crisis, strict criminal sanctions are always causing concerns and have to be subjected to firm controls. These exceptional situations should not lead to over expressive criminal instruments and sanctions. Another appropriate way to respond to the requirements of proportionality is to achieve the right balance between coercion and prevention.

The principle of necessity means that the urgent measures have to meet their purpose, through minimal change of the common rules and procedures of democratic decision making. Having in mind the fast and unpredictable development of the crisis, a relatively wide legislative delegation might be required, but in the current circumstances, those have to be formulated as narrow as possible, so as to limit any possible abuses.²⁴

The principle of non-discrimination is very relevant within the current context. When reviewing the observance of this principle, one has to check if the measures unjustifiably discriminate against different categories of people.²⁵

Another very important aspect of the decrees with full legal effect is their application within the intersectional approach, which assumes predicting solution, i.e. measures that would consider all aspects of citizens' needs.



Nevertheless, as soon as decrees with full legal effect have been adopted, the government has to make sure that those are appropriately communicated to the public, with a clear and precise reasoning for the adoption of the relevant measures, explaining their purpose, reasons for adoption and expected consequences, thus eliminating the possibility of adopting arbitrary measures.

All of the above leads us to the conclusion that any decrees with full legal effect adopted by the Government, have to be legal, proportionate, necessary and nondiscriminatory, as well as time limited and least intrusive, but still provide for the protection of peoples' health.

During the past period, the Government has adopted numerous decrees with full legal effect related, aimed at protecting human lives, as well as numerous economic measures and decrees aimed at extending the legal effect of certain legal acts and documents, as well as other actions.

Research on the issue of whether COVID-19 is a risk for democracy has placed our country amongst the countries that have adopted over restrictive measures in response to the pandemic, including a disproportionate curfew, excessive restrictions of movement and large penalties.²⁶ Furthermore, in the publication dedicated to the Western Balkan during times of global pandemic, the measures adopted by our technical Government have been assessed as overly restrictive and quite often without an envisaged positive effect in the combat against the pandemic, with the exception of sending an authoritative signal for the population.²⁷

24 Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>. <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>

25 Paragraphs 182-190. A. et al. v. United Kingdom (GC). 3455/05. (ECtHR, February 19, 2009). <https://www.refworld.org/pdf/id/499d4a1b2.pdf>

26 Lührmann, A., Edgell, A. B., & Maerz, S. F. (2020). Pandemic Backsliding: Does Covid-19 Put Democracy at Risk? (Policy brief No. #23). https://www.v-dem.net/media/filer_public/52/eb/52eb913a-b1ad-4e55-9b4b-3710ff70d1bf/pb_23.pdf

27 BiEPAG. (2020). The Western Balkans in Times of the Global Pandemic (Policy brief). Available at: <https://biepag.eu/wp-content/uploads/2020/04/BiEPAG-Policy-Brief-The-Western-Balkans-in-Times-of-the-Global-Pandemic.pdf>

The limited capacity of the healthcare system and the lack of trust between the citizens and the state, i.e. citizens' mentality, are some of the issues offered as a justification for the restrictiveness of the measures introduced by some of the relevant institutions²⁸.

Although decrees with full legal effect are being enacted in order to address the causes and consequences of the pandemic, there is no oversight by the Parliament what so ever and therefore it is necessary for the other relevant bodies to conduct oversight, thus ensuring the rule of law and protecting the vital democratic values.

One should emphasize the importance of the Constitutional Court as the single domestic watchdog, whose constitutional duty is to protect the constitutionality and legality of the enacted decrees with full legal effect.

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In this regard, apart from several initiatives, the Constitutional Court has acted ex officio for the very first time, by reviewing the constitutionality and legality of five decrees with full legal effect. The Court decided to take legal action for the assessment of the constitutionality and legality of three of the challenged decrees.²⁹ In addition, the Constitutional Court announced that several initiatives has been raised with the Court, for the review of the constitutionality and legality of all enacted decrees with full legal effect, which are

now to be reviewed during the future sessions of the Court. It is important to point out that any intervention and attempt to influence the decisions of the Constitutional Court at this time would be seen as undermining the only authority that can control the executive government in this situation.

Regarding the mechanisms for protection and support, citizens largely distrust state institutions and therefore, a large number of reported violations remain unprocessed. The general view regarding the work of state institutions is that they have become passive and do not respond to citizens' needs in times of crisis. The same conclusion was also drawn regarding the work of the Ombudsman office, which remained in the shadows, instead of being the leading institution responsible for human rights protection.*

28 Kolozova et al. (2020). The State of Democracy in North Macedonia in the Times of the Covid-19 Pandemic (Policy brief). Available at: <http://www.isshs.edu.mk/wp-content/uploads/2020/04/The-State-of-Democracy-in-North-Macedonia-in-the-Times-of-the-Covid-19-Pandemic.pdf>

29 Constitutional Court of RNM. (April 28, 2020). Communication. Available at: <http://ustavensud.mk/?p=19001>

PROTECTING HUMAN RIGHTS IN TIMES OF EMERGENCY³⁰

On the basis of the Convention, all countries parties to the European Convention on Human Rights (ECHR) have the option of derogating certain obligations prescribed by the Convention for a certain time period and under specific conditions, i.e. in the event of a “state of emergency”, war or other general danger that is threatening to the lives of citizens.³¹ Article 15 provides for certain substantive and procedural conditions that have to be met, in order to consider the derogation allowable.

However, derogations are not allowed in relation to Articles 2 (right to life), 3 (prohibition of torture), 4(1) (prohibition of slavery and forced labor), 7 (no punishment in the absence of law), 4 from Protocol 7 (double jeopardy), as well as Protocol 13 (Article 2 in particular) and Protocol 6 (Article 3 in particular).

Any measures introduced by the state have to be proportionate to the goal they are trying to achieve. Pursuant to the Constitution of RNM, “Human rights and freedoms may be restricted only during a state of emergency or war”. Any restrictions of human rights and freedoms cannot discriminate against citizens based on their sex, race, skin color, language, political and religious beliefs, national and social origin or property and social status. Restrictions of human rights and freedoms shall not be allowed in relation to the right to life, the prohibition of torture, inhumane and other degrading types of treatment and punishment, the legally prescribed punishable acts and sentences, as well as to the freedom of personal conviction, conscience, thought and public expression of thought and religious beliefs.³²



The members of the Roma ethnic community were indicated as one of the most vulnerable groups during the past period, considering their permanent marginalization, exclusion and their social status. They do not have proper access to water and electricity, but are also unable to buy masks, which makes them extremely exposed to the virus.



During the pandemics, the number of members of the LGBTI community who have been seeking support from the civic organizations was increased by 50% in comparison with the previous years, mainly in the areas of psychological support. The very first national call line for LGBTI support was established three months ago. In three months, 30 members of the LGBTI community have called and asked for support. The movement restrictions that were introduced meant that LGBTI individuals are spending more time at their homes, which makes them much more susceptible to violence.*

30 Protection of human rights in times of emergency. Article written as part of the project “Human Rights for All”. Institute for Human Rights. Available at: <https://www.ihr.org.mk/mk/novosti/zashtita-na-chovekovite-prava-vo-vonredni-uslovi>

31 Pursuant to Article 15 “Derogations in case of emergencies”, this possibility is at their disposal in the event of a “war or other general danger that threatens the life of the nation”.

32 Article 54, Constitution of the Republic of North Macedonia.

* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

The non-discrimination principle is quite important in the current context, as it is also according to the European Convention of Human Rights. When assessing whether the measures were “strictly required” in accordance with Article 15 of the Convention, the Court would also analyze if the measures unjustifiably discriminate against certain categories of persons. Furthermore, certain forms of discrimination may be considered as “degrading treatment” as prescribed in Article 3 and this article does not allow for derogation in any circumstances. In addition, the fact that some specific needs of certain individuals who belong to a less fortunate group of citizens have not been taken under consideration, may also result in discrimination. This way, the prohibition of discrimination may create an obligation to undertake certain positive measures, so as to achieve substantive equality.³⁴

“ During the past period, many women have asked for legal assistance in relation to the protection against family violence. Still, a large number of them do not initiate protection procedures, due to the lack of trust in the institutions. Therefore, nobody is surprised by the fact that according to the official statistics of the institutions, the total number of reports on family violence did not increase, although it was obvious that this number did increase gradually throughout the years. Family violence victims do not get efficient protection, even in court proceedings, bearing in mind that large number of hearings are being postponed and are not rescheduled soon, thus violating the principle of urgency for these cases. In the meantime, family violence victims are left without protection and left exposed to possible further violence. As a result of the untimely reaction by the institutions, 4 cases of femicide have been recorded during the past 6 months.

” Women in the rural areas do not have access to healthcare protection and their duties in and around the home have multiplied. Furthermore, many of these women are not registered, working in the informal economy and as a result, they are not able to enjoy many of the rights, amongst others, the right to healthcare protection.*

Notwithstanding the fact that there is a significant difference in the scope of the measures taken in response to the current COVID-19 threat and the manner in which those measures are being implemented in various countries, these exceptional measures undertaken in order to prevent the further spread of the virus will most probably raise certain questions in regards to their potential discriminatory consequences. Due to the low standard of living, poverty and inappropriate housing, one portion of the population has become more vulnerable and exposed to challenges and risks in dealing with this new situation.

“ The Centers for Social Care operate with reduced capacities because of the work in shifts and therefore, the marginalized communities cannot receive appropriate treatment. The civic organization Reactor was testing the national help lines for support of various groups of citizens and they were unable to connect, or they would do that only after 4 unsuccessful attempts, which meant that these help lines are completely inefficient. The conclusion drawn by the civic organizations is that they have taken over the task of supporting the citizens in the time of crisis, due to the complete inefficiency of the state system, but nevertheless, they neither participate in the drafting of measures for support of the citizens in times of crisis, nor in the preparation of a program that would help to overcome this crisis. As a result, the measures for support did not include the most vulnerable and marginalized communities and they are inaccessible for most of these groups.*

* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

For instance, generally speaking, as prescribed in the Convention (Article 2 of Protocol 1) and the European Social Charter (Article 17), the right of education should be provided for, although the actual organization process requires certain adaptation. In our case, this meant conducting the educational process using online tools and applications.

Still, one has to pay special attention, in order to make sure that members of vulnerable groups enjoy their right to education and have equal access to education, i.e. means and materials that are required to follow the adapted process of instruction.³⁶

Besides the provision of means and materials, one also need to ensure appropriate conditions for online instruction, both for children and their teachers. Teaching staff should receive certain guidelines on online instruction, from relevant sources and specific recommendations, as well as short training on how to use online tools, thus unifying the process of instruction, so that teachers are provided with an opportunity to efficiently perform their duties. The online instruction educational process should not exclude any individuals with disabilities and this type of educational approach has to be inclusive and accessible to all.³⁷ Efforts are being made in order to provide more uniformity in the preschool and primary education³⁸ but there are still certain contradictions that require a detailed analysis of the potential discriminatory consequences cause by the newly introduced measures..

Certain forms of discrimination that could be considered as “degrading treatment” are also visible within the provision of an appropriate level of healthcare protection for individuals who have been deprived of liberty. This refers to the right to life (Article 2 of the Convention) and the prohibition of torture and inhumane and degrading treatment and punishment (Article 11 of the revised European Social Charter).³⁹ The Convention prescribes that countries, signatory parties to the Convention, have to ensure an appropriate level of healthcare protection for individuals who have been deprived of liberty.⁴⁰ The European Committee for Prevention of Torture (CPT) has issued a Statement of principles relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic⁴¹. Those are applicable to various locations, including

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Children’s rights have been mostly invisible throughout the crisis, although many of their rights have been violated, especially the right to education, the right to see their parents, when they do not live together, the right to be protected from violence and their right to be consulted in the process of making decisions that affect their rights.*
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* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020

36 According to the media outlets, more than 800 pupils from Shuto Orizari, who attend classes at the primary school of “Brothers Ramiz and Hamid”, cannot follow the lectures because most of them do not have computers and internet access and therefore, there is no schooling at this school. By not providing appropriate conditions for education of all children equally, the State violated their right to education and discriminated against this group of pupils.

37 Parents have been complaining because of lack of inclusion in the educational process. They are asking for homeschooling assistants. Furthermore, schools neither dispose of appropriate didactic materials, nor properly trained teaching staff. Statistics show that schools are requesting to get 334 educational assistants, which is 4 times more compared to the current number. Individual educational plans were not prepared in 16 of the elementary schools in Skopje, and parents in two of them refused to send their disabled children to school. Focus. (December 3, 2019). Reaction by the parents – Children with disabilities are still not getting proper education. Available at: <https://fokus.mk/detsata-so-poprechenost-se-ushte-nemaat-soodvetno-obrazovanie-reagiraat-roditelite/>.

38 Example: Ministry of Labor and Social Policy. MLSP: Educational materials, games and activities for children from 3 to 6 years of age on the EDUINO platform. Available at: http://www.mtsp.gov.mk/pocetna-ns_article-mtsp-edukativni-materijali-igri-i-aktivnosti-za-deca-od-3-do-6-godini-na-platformata-eduino.nsp

39 Item 3.1. Council of Europe. 2020. Toolkits for Member States, Respect for democracy, rule of law and human rights during the sanitary crisis related to COVID-19 (SG/Inf(2020)11). Available at: <https://rm.coe.int/covid-toolkit-ms-mkd/16809e3c21>

40 See Khudobin v. Russia, number 59896/00, October 26, 2006; As stated in the CPT’s Communication on the principles related to the treatment of arrested individuals in the context of the Corona virus pandemic (COVID-19), „The inappropriate level of healthcare protection can quickly lead to situations that could be qualified as “inhumane and degrading treatment“.

41 Committee for the Prevention of Torture and Inhumane or Degrading Treatment of the Council of Europe. (March 20, 2020). COVID-19: Council of Europe anti-torture Committee issues “Statement of principles relating to the treatment of persons deprived of their liberty”. Available at: <https://www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty->

facilities for police detention, penal and correctional institutions, detention centers for migrants, psychiatric hospitals and social care institutions, as well as to various newly established institutions or areas where people are placed in quarantine in the context of the COVID-19 pandemic. The lack of hygiene and substandard conditions, insufficient medical care and the inefficient legal assistance, are just some of the problems that point to the inhumane and inappropriate treatment of convicts and individuals who have been deprived of their liberty. Therefore, one should ask the following question: what types of measures have been taken in order to provide for the enjoyment of the right to life and prohibition of torture and other inhumane and degrading treatment.

Least information is available about the persons residing in closed type institutions, who are very susceptible to the virus, having in mind their living conditions and the limited time they spend outside. Furthermore, their communication with the outside world is limited, because of the temporary ban on visitors in the prisons. The Helsinki Committee for Human Rights reported that they only have information about the manner in which visits are being organized in the Skopje Prison, which notified them that detainees can only be visited by one person at a time and without any physical contact, in a separate visiting room, which is disinfected after each individual visit. On the other hand, visits to convicted prisoners are not allowed and two mobile phones have been provided by the prison for communication with the outside world, which are being used by the inmates according to their needs. There is no information either regarding the situation of the children in juvenile detention centers and prisons, or their communication with the outside world.*

In the event of derogation from the Convention, it is extremely important to ensure full transparency of the process and detailed explanation of the requirement, grounds, goals, scope and duration of the state of emergency and restrictions of certain rights. In doing so, one has to bear in mind that proportionality and necessity are elements that have to be respected throughout the entire length of the derogation.

Labor relations and workers' rights have been pointed out as one of the most critical areas, where citizens have been asking for help from the civic organizations the most, especially in the textile industry. People are usually seeking protection from the labor inspectorate, which has been especially active during this period, but they also seek protection before the courts.*

* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

2.3. FREEDOM OF MOVEMENT IMPLICATIONS DURING THE COVID-19 PANDEMIC⁴³

The concept of respect and prevention of possible human rights abuses as such, to a greater extent highlights the moral character of these rights, rather than their legal nature and impregnation in certain legal norms. Human rights, as something natural and inviolable, proclaim widely established standards, amongst other, aimed at limiting the power of the state and establishing a balance between the respect of fundamental rights and freedoms and the expression of the state's power through the practice of its authorities on the citizens.

This balance was greatly disturbed by the beginning of the pandemic caused by the corona virus (COVID-19), which has forever changed the perception of our lives free of any restrictions, placing the protection of the collective health at primary level, by introducing human rights restrictions. The Republic of North Macedonia was no exception when it comes to taking measures that limit certain human rights, primarily freedom of movement, the right to expression, the right to private and family life, the right to personal data protection etc.

Freedom of movement vis-à-vis the imposed restrictions aimed at health protection

The freedom of movement is one of the most basic human rights provided for in many international conventions and also one of the basic pillars that supports the foundation of the European Union. Freedom of movement means fluctuation of people at local, regional and international level, as well as a possibility to achieve economic, educational, social and societal progress and development.

Protocol 4, Article 2 of the European Convention on Human Rights (ECHR) defines freedom of movement as the right of any person lawfully within the territory of a State, to enjoy the liberty of movement and freedom to choose his or her residence, but also to be free to leave any country, including his or her own. Since this is a relative right that can be restricted for the purpose of protection of peoples' health in a declared state of emergency (as it was the case almost in all European countries, with the exception of Sweden), the ECHR provides for certain restrictions on the exercise of these rights, but only such that are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of order public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The corona virus has tested the readiness (or lack thereof) of the countries at the global level, to deal with the health crisis, and then also with the difficult economic crisis, caused by the restrictions to the freedom of movement.

The declaration of state of emergency was the very first step towards restricting human rights. This was followed by the introduction of even more restrictive measures that limited freedom of movement, such as isolation measures and quarantines, aimed at protecting public health.



In the context of the above stated, it remains to be seen, what will be the finding of the European Court of Human Rights in Strasbourg regarding the human rights that were violated during the pandemic, if any. Nevertheless, it is undeniable that one needs to achieve the right balance between the protection of the collective health and the respect for human rights. The observance of a single human right should never be ensured to the detriment and by violation of another.

⁴³ Stefanovska, Vesna. (September 4, 2020). Freedom of Movement Implications during the COVID-19 Pandemic. Human rights blog as part of the project "Human Rights for All". Available at: <https://www.ihr.org.mk/mk/platforma/implikacii-vrz-sloboda-ta-na-dvizhenje-za-vreme-na-pandemijata-kovid-19>

FREE LEGAL ASSISTANCE PROGRAM OF THE INSTITUTE FOR HUMAN RIGHTS

Table 1.

Total number of inquiries received by IHR from July to November 2020

Field of inquiry	Number
Total number of received inquires	119
Asking what is FLA	57
Labor relations	13
Residency of aliens in RNM	1
Property rights	7
Judicial disputes and procedures	10
Enforcement	5
Social protection	13
Family law	4
Tax law	1
Citizenship	2
Requirements for secondary legal assistance	2
Country entry requirements	1
Lack of response by institutions	3

During a period of 5 months, the Institute for Human Rights has received 119 messages with inquires on the social medium Facebook or via the official email of the Institute. Around half of these messages (or 47%) were in fact inquiries about the availability of free legal assistance. This leads towards the conclusion that a vast number of the population is not familiar with the possibility of receiving free legal assistance, when faced with a specific legal issue. Following the promotion of the Law on Free Legal Assistance on the European Day of Justice, by the Ministry of Justice, one may expect that in the future, for the citizens of the Republic of North Macedonia to be better informed and familiar with the concept of free legal assistance and therefore able to refer to the authorized associations and legal clinics, seeking advice on specific legal issues.

The analysis of the remaining received inquiries has shown that most of the citizens were seeking primary legal assistance for issues in the fields of labor relations and social protection.

“ Access to justice was the most serious problem for the citizens, especially the ones from the marginalized communities and rural areas. Citizens are not able to physically come either to the institutions or the organizations that provide free legal assistance and therefore they are not able to receive any legal counseling, or to initiate any kind of procedure, aimed at the protection of their rights. Furthermore, citizens are not familiar with the Law on Free Legal Assistance and have no information regarding the possibilities to obtain legal support from the registered civic organizations.* ”

When it comes to labor relations, IHR has received numerous legal inquiries in different fields of labor law and it provided the applicants with a general legal information or a general legal advice..

Most of the inquiries in this field were related to unemployed individuals, or persons who lost their jobs, asking for advice about the institutions that they should contact as unemployed individuals, so as to be able to find new employment easier.

Most of the inquiries in the field of social protection were related to the necessary conditions that have to be met in order to attain the right to a minimum social security benefit and the institution that they should contact, in order to attain this right. Besides the topic of minimum social security benefit, IHR also received inquiries related to the requirements for receiving child allowance and attaining the right to financial assistance for the provision of help and support by caregivers.

In addition, IHR also received inquiries from individuals who have already initiated proceedings before certain institutions or courts. People have been asking if it was possible to file a complaint because of a certain actions taken by a public prosecutor, judge, enforcement agent, notary public or an attorney, who violated some of their rights and what are the legal remedies at their disposal, depending on the current stage of the proceedings.

Apart from the inquiries mentioned above, IHR also received some inquiries from people who wanted to know how to act, in case they do not receive an official answer from a certain institution. In these kind of cases, IHR was advising them to send a follow-up letter to the same institutions, or contact the State Administrative Inspectorate, as an institution in charge of monitoring the timely, economical and efficient attainment of the rights and interests of the citizens and other participants in the administrative procedures for resolution of administrative disputes.

* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

FINAL CONSIDERATIONS

Human rights have to be the main element of focus for the states, both during times of prosperity and times of crisis. The report leads us to the conclusion that the fundamental rights and their legal framework have been harmonized with the European standards and strengthening in regards to the implementation and protection of human rights, but the systematic and consistent implementation of all recommendations is still missing. In addition, one may notice that the international, European and domestic reports identify similar problems in the human rights field in RNM. All those reports commented on the importance of the implementation of the Law on Prevention and Protection against Discrimination and its harmonization with other laws and on the establishment of the Commission for Prevention and Protection against Discrimination, aimed at providing a systemic solution and monitoring of all new and unresolved cases of discrimination. In the same regard, the need of additional strengthening of the Ombudsman's activities was also pointed out, in order to provide for efficient fulfilment of the new obligations and handling larger number of complaints.

The Law on Prevention and Protection against Discrimination had a long way to go before it was finally enacted in October, 2020. The long process of its final adoption, including its revocation during the state of emergency and the nonexistence of a Commission for Prevention and Protection against Discrimination, created a void during the state of emergency, whereas the obligation to protect citizens against discrimination was shifted to the Constitutional Court and the Ombudsman. In theory, the new Law is well designed and the implementation of this Law, as one of the key requirements by the European union, has to provide for the principle of equality, prevention and protection against discrimination in the observance of human rights and freedoms and finally, to ensure better, more professional and more efficient protection of the basic rights and freedoms of the citizens.

Furthermore, the Report has identified, in a way, the most common violations of the human rights. For instance, member of the LGBTI community are faced with prejudice, intolerance and discrimination on a daily basis and the member of the Roma community are continuously victims of segregation, discrimination and racism. Apart from these violations, the Report also detected the need to better deal with hate crime and hate speech, as well as to provide for freedom of expression, freedom of the media and safety of journalists.

In addition, major emphasis has been placed on persons with disabilities and the observance of their rights. The Reports has indicated that efficient and appropriate measures have been undertaken, including provision of equal support, in order for the persons with disabilities to achieve and maintain a maximum level of independence and full physical, mental, social and professional capacity, as well as to be fully involved and participate in all aspects of life. Nevertheless, during the past few years, RNM went through a period when some of these social rights, also defined by the Charter, were either neglected or insufficiently promoted and developed. Therefore it would be safe to conclude that these individuals are still living on the margins of society and one has to ensure many additional measures, activities and effort on the part of the social stakeholders, so as to create the necessary conditions, required for the unhindered functioning of these individuals in everyday life.

With regards to free legal assistance, we may conclude that one needs an intensive public campaign to raise the awareness of the general public and to closer explain what free legal help actually means, and also to point out that labor rights were the issue of highest interest during the last five months.

The current year (2020) will be remembered mainly due to the pandemic caused by Covid-19, which had a significant effect on the overall functioning of the entire society, and especially on the observance of human rights and freedoms. Year 2020 has shown that a pandemic, like any other crisis, has a disproportionate effect on marginalized communities, women, racial, ethnic and minority communities and people who live in extreme poverty. Declaring the state of emergency was the first step towards limiting

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Regarding the groups of citizens that have been hit the hardest by the crisis, it was pointed out that all marginalized groups are having difficulties in assessing services and proper support, but also with an increased probability of family violence. During the past period, the following groups have been identified as most vulnerable: victims of family violence, members of the Roma community, individuals residing in closed type institutions, members of the LGBTI community, women in rural areas, children and drug users and their rights and all other individuals who have difficulties in getting healthcare protection and therapy.*

“

human rights, followed by even more restrictive measures that limit the freedom of movement through isolation and quarantine, in order to protect public health. Some of these measures, related to the restriction of the movement for a specific category of citizens, have been declared unconstitutional by the Constitutional Court, due to discrimination on the grounds of age.

Having in mind all of the above, one may conclude that the observance of human rights in our society has been put to a test with the actual crisis. We will have a full understanding of the effects that COVID -19 had on human rights only in few years, when some of the measures taken by the Government will for sure be analyzed in the judgments of the European Court of Human Rights.

* Conclusions by the focus groups organized as part of the project titled „Human Rights for All“, with representatives of civic organizations active in the human rights field, October, 19 and 20, 2020.

Анекс I

**REVIEW OF SELECTED
INTERNATIONAL AND
DOMESTIC HUMAN
RIGHTS REPORTS**

REVIEW OF THE SEVENTH REPORT ON THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER AND THE RIGHT TO INDEPENDENCE AND SOCIAL INTEGRATION OF THE PERSONS WITH DISABILITIES

The Council of Europe’s European Social Charter is an essential addition to the ECHR, which guarantees the civic and political rights of people.⁴⁶ It is an extremely important document, because the observance of these rights is most susceptible to the occurrence of unjust discrimination on the basis of inter alia disability. For that reason, the Convention obliges the states to undertake efficient and appropriate measures, including support, so as for persons with disabilities to be able to achieve and maintain a maximum level of independence and full physical, mental, social and professional capacity, as well as to be fully involved and participate in all aspects of life.

If one were to analyze the rights and interests of people and their basic freedoms as determined by the European Social Charter, as well as how many and to what extent are observed in this country, one may conclude that in the majority of cases, those have been implemented, but still there is a need to further harmonize and establish certain rights that haven’t been regulated so far and to ensure their full observance in practice. For instance, this refers to the need to further regulate the rights of persons with disabilities.

Apart from the declarative commitment to ensure formal equality, every country has a positive obligation to create the necessary conditions where equality would be also manifested as factual equality or equality in real life. The status of the disabled individuals and the respect of their social, healthcare, educational and other rights, are indicators of whether and to what degree the state was successful in providing equality for all of its citizens.⁴⁷

The factual situation point to the fact that persons with disabilities in RNM are faced with problems in their everyday life. Persons with disabilities are usually not being recognized as active participants in the promotion of the human, as well as the social and economic development in society. The right of independence and social integration of persons with disabilities is guaranteed in Article 15 of the Charter.⁴⁸

The most recent legislation in our country has been harmonized with UN and EU regulations and it contains antidiscrimination provisions.

The new **Law on Prevention and Protection against Discrimination** was adopted in October 2020 and therefore, it remains for us now only to monitor its implementation and application by all state authorities, units of local self-government, individuals with public authority and all other legal and natural persons in various areas as prescribed in the Law. The new Law also provides a definition of persons with disabilities,

46 The Seventh report on the implementation of the revised European Social Charter was drafted in accordance with the information system adopted by the Committee of Ministers of the Council of Europe and in use as of October 31, 2007. It contains relevant information and data on the implementation of the assumed responsibilities by RNM, regarding articles 1, 15, 20 and 24 of the Charter. The reference period of this Report is 1.1.2015 to 31.12.2018.

47 Article 54, paragraph 3 of the Constitution of the Republic of North Macedonia: “The restriction of freedoms and rights cannot discriminate on grounds of sex, race, color of skin, language, religion, national or social origin, property or social status”.

48 Ministry of labor and social policy. (2019). Seventh report on the implementation of the revised European Social Charter. [http://www.mtsp.gov.mk/content/pdf/dokumenti/2020/12.5-VII%20Report%20on%20rESC%20-%20N.Macedonia%20\(MKD\)%20-.pdf](http://www.mtsp.gov.mk/content/pdf/dokumenti/2020/12.5-VII%20Report%20on%20rESC%20-%20N.Macedonia%20(MKD)%20-.pdf)

which has been harmonized with the one defined by the Convention on Protection of Persons with Disabilities. One positive thing that is worth mentioning is the fact the Government of RNM has established a National Coordination Body for Equal Rights of Persons with Disabilities⁴⁹, comprised of representatives from various national organizations and associations of people with disabilities, as well as from the line ministries and institutions that have various authorities in this field.

In addition, the **Law on Employment of Persons with Disabilities** provides for some specific affirmative measures, such as tax exemptions and exemptions on payment of social contributions when hiring persons with disabilities. These specific measures for the instigation of employment of persons with disabilities are financed through the Special Fund. During the past period, in the area of employment of disabled individuals, the legislator has regulated the special conditions for hiring and work of persons with disabilities.⁵⁰ In order to provide for implementation of the measures prescribed in the Law on Changes and Amendments to the Law on Employment of Persons with Disabilities⁵¹, the government authorities have adopted three additional bylaws, i.e. rulebooks, which further regulate those measures as follows:

- Rulebook on conducting oversight of the provisions of the Law on Employment of Persons with Disabilities (“Official Gazette of RM”, number 159/18);
- Rulebook on conducting inspections related to the use of grants provided from the Special Fund, intended for the improvement of the conditions of employment and work of persons with disabilities (“Official Gazette of RM”, number 159/18); and
- Rulebook on the specific conditions and manner of provision of working assistants for disabled individuals and financial compensations for working assistants of disabled individuals.⁵²

The Law on Changes and Amendments to the Law on Employment of Persons with Disabilities further regulates the procedure of establishing the status of a disabled person, the deadline for passing a decision in these proceedings and the right of appeal. Pursuant to the Law on Employment of Persons with Disabilities, employers are obliged to ensure appropriate working conditions and adapt the working post in accordance with the tasks of the job, the type and level of education and the type and degree of disability of the person who is being employed.⁵³ None the less, some of the employers continue to hire persons with disabilities because of the above mentioned benefits, and then, as soon as the legally prescribed minimum duration of their employment expires, they tend to let them go and hire other disabled persons in their place. The state has to take measures so as to eliminate such practices and protect these individuals.

Law on National Database of Persons with Disabilities,⁵⁴ This Law regulates the establishment and functioning of a national database of persons with disabilities, the processing of the data within, the use of this data, the security of the data and the monitoring of the operation of the database. Nevertheless, there are no official numbers and statistics available regarding the persons with disabilities in the country.

49 Government of the Republic of North Macedonia. (2018). National Coordination Body for the Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of North Macedonia. Available at: <https://vlada.mk/KoordinativnoTelo/PravaNaLicaSoPoprechenost>

50 The provision of irrevocable grants for indefinite employment of unemployed persons with disabilities, adaptation of the work position and purchasing of the appropriate equipment, the tax exemptions and the provision of funds for contributions and financial support of operations are of extreme importance.

51 Law on Changes and Amendments to the Law on Employment of Persons with Disabilities, Official Gazette of RM, number 99/2018.

52 Official Gazette of RM, number 159/18.

53 Law on Employment of Persons with Disabilities, Official Gazette of RM, number 44/2000; 16/2004; 62/2005; 113/2005; 29/2007; 88/2008; 161/2008; 99/2009; 136/2011; 129/2015; 147/2015; 27/2016 and 99/2018). This Law regulates the special conditions for employment and work of persons with disabilities, as well as the conditions for the incorporation and operation of companies that employ persons with disabilities.

54 Law on the National Database of Persons with Disabilities, Official Gazette of RM, number 143/2015.

As far as the reform related to the categorization of persons with special needs is concerned, the report noted that the Government of RNM, in cooperation with the UNICEF office in Skopje and the civic sector, promoted the Macedonian version of the „International Classification of Functioning, Disability and Health”. This tool will help in changing the ways we look at and respond to the needs of children with disabilities and provide for their greater inclusion in the society. The Report of the UN Committee on the Rights of Persons with Disabilities also noted the need of changing the current trend of “categorization” of children, thus, amongst other, expressing its concern over the use of various methods for assessing the degree of impairment and definitions within the legal framework of the country, which are not in accordance with the human rights based approach to disability. Year 2019 marked the beginning of piloting the new model of evaluation for additional educational, healthcare and social support of children and youth with disabilities.⁵⁵ The work of all competent professional bodies was standardized and currently, work is being done on the introduction of a central electronic database.

During the period so far, there have been 356 functional assessments of children and youth – 152 at the Functional Assessment Centers, 10 in home surroundings and 194 assessments in the schools. For the purpose of full implementation of the new assessment model, it is proposed for the professional assessment bodies – one at the national and nine at the regional level, to become an integral part of the Service for Mental Health of Children and Youth at the PHI Healthcare home Skopje. The plan is to dismiss the existing three Commissions, whereas all further assessment will be performed by the newly established Functional Assessment Unit.

The Ministry continued with the development of a network of daycare centers as social service department for children and adolescents with disabilities. Currently, there are 30 daycare centers in total, for children and adolescents with different disabilities, used by around 500 beneficiaries. Year 2018 has marked the largest progress of the process of deinstitutionalization, with the adoption of the new National Strategy for Deinstitutionalization 2018-2027 – “Timyanik” and its Action plan, which helped to transform institutional life to the social services in the local communities. This is when institutional life slowly got abandoned and one portion of the dependents got transferred to group homes and foster families.⁵⁶

Parents are facing difficulties when enrolling their children in schools, because elementary schools are inaccessible for children with physical disabilities, due to the absence of access ramps.

The Report shows that efficient and appropriate measures are being undertaken, including equal support, aimed at helping individuals with disabilities to achieve and maintain a maximum level of independence and full physical, mental, social and professional capacity, as well as to be fully involved and participate in all aspects of life. Nevertheless, during the past few years, RNM went through a period when some of these social rights, also defined by the Charter, were either neglected or insufficiently promoted and developed. Therefore it would be safe to conclude that these individuals are still living on the margins of society and one has to ensure many additional measures, activities and effort on the part of the social stakeholders, so as to create the necessary conditions, required for the unhindered functioning of these individuals in everyday life.

55 Ministry of Health. (September 30, 2019). Introduction of a completely new model for assessing disability – children and families get support for a dignified childhood that would allow for further development and progress. Available at: <http://zdravstvo.gov.mk/voveden-celosno-nov-model-za-procenka-na-poprechenost-decata-i-semejstvata-dobivaat-poddrshka-za-dostoinstveno-detstvo-vo-koe-kje-se-razvivaat-i-napreduvaat/>

56 Pursuant to the National Deinstitutionalization Strategy 2018-2027, by the end of 2019, the number of children and adults residing in the six residential social institutions was reduced by more than 44% - from 482 to 267.

REVIEW OF THE COUNCIL OF EUROPE'S FRAMEWORK CONVENTION FOR PROTECTION OF NATIONAL MINORITIES

The Framework Convention for Protection of National Minorities (FCPNM) was adopted by the Council of Europe in 1994. Our country became a signatory party in 1996⁵⁷, thus accepting to implement the principles listed in the Framework Convention and the appropriate government policies. Furthermore, according to Article 25 of the Convention, each state is obliged to regularly inform the Secretary General and the Committee of Ministers on the implementation of the Framework Convention.⁵⁸ As of June 24, 2020, RNM has already gone through five rounds of monitoring and has delivered five reports regarding the implementation of this Convention and the recommendations of the Advisory Committee on the Framework Convention for Protection of National Minorities.⁵⁹

According to the latest opinion of the Advisory Committee of FCPNM from 2016,⁶⁰ RNM was given four urgent recommendations and twelve further recommendations in relation to the implementation of the Convention. The urgent recommendations are as follows⁶¹:

- To continue building an integrated society and to avoid mutually excluding policies that would lead towards further establishment of divided societies;
- To increase the public trust in the public institutions and to actively refrain from hate speech and hate crime;
- To establish an integrated and multicultural educational system; and
- To continue applying the principle of equitable representation and to promote the effective participation of representatives from all national minorities.

The need of building an integrated society originates from the fact that the state functions through separate and divided societies, primarily along ethnic lines. In 2018, aimed at “initiating activities and strengthening the processes of communication and collaboration amongst the communities so as to create a society, where everyone feels like a member of a single society”, the Government adopted the National Strategy on the Development of a Single Society and Interculturalism Concept.

Furthermore, the Advisory Committee criticized the Agency for Audio and Audiovisual Media Services, claiming that it refrained from imposing measures against the broadcasting companies, in cases when their programs included hate speech and discrimination and instead, the Agency chose to use informal warnings with uncertain results. However, the Report states that, according to the Law on Audio and Audiovisual Media

57 Council of Europe. FCNM Monitoring – North Macedonia. Available at: <https://www.coe.int/en/web/minorities/north-macedonia>

58 Framework Convention for the Protection of National Minorities of the Council of Europe, February 1, 1995, Council of Europe.

59 Council of Europe. FCNM Monitoring – North Macedonia. Available at: <https://www.coe.int/en/web/minorities/north-macedonia>

60 FCNM Advisory Committee. (2016). Fourth Cycle Report by the Advisory Committee on RM (ACFC/OP/IV(2016)001). <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d23e3>

61 Republic of North Macedonia. (2020). Fifth report submitted by North Macedonia following the monitoring of the implementation of the Framework Convention for the Protection of National Minorities of the Council of Europe (ACFC/SR/V(2020)003). <https://rm.coe.int/5th-sr-north-macedonia-mk/16809edd82>.

Services (LAAMS) from 2014⁶², the Agency did not longer have such an option. Nevertheless, with the latest changes of the LAAMS in 2018, the Agency was given an authority to impose fines and the number of prohibited grounds for discrimination got increased as well.

As far as the **educational system** is concerned, the Ministry of Education and Science (MES), pursuant to the Educational Strategy for 2018-2025, is committed to the improvement of the quality of education, promotion of the integration of students belonging to different ethnic communities, improvement of the spatial conditions required for integration, enrollment of children in the schools at the appropriate age (regardless of their origin) and provision of scholarships and tutoring for Roma students in secondary schools. In addition, the Ministry is committed to establishing school teams in charge of integration, announcing open calls for implementation of activities for multiethnic integration and strengthening of curriculums and standards for obtaining interpersonal, intercultural, social and civil skills.

The last urgent recommendation refers to the principle of equitable representation. The Report states that the Government of RNM, pursuant to the Law on Public Sector Employees, was supposed to establish a mechanism, so as to ensure merit based employment procedures, in combination with the so-called “positive discrimination” and therefore “the ethnic membership is just one of the parameters to be considered, after all candidates have demonstrated that they are fully qualified for the position, following the selection process”⁶³.

In order to be able to pro-actively deal with the inequalities faced by the members of national minorities, in 2018, the Agency for Community Rights Realization drafted the new Law on Promotion and Protection of the Rights of the Members of the Communities that are less than 20% of the population of the Republic of North Macedonia. It also produced numerous situational analysis and organized forums, trainings, public debates and conferences on this topic. It started with the implementation of the IPA project for “Strengthening of Democracy through Promotion and Development of the Rights of Communities”. The Directorate for Affirmation and Promotion of the Culture of the Members of the Communities was established back in 2002 and it is responsible for providing support and promoting the culture of the members of the communities. There have been changes and amendments to the Criminal Code in 2018, thus incriminating hate crime and also expanding the legal remedies that are at the disposal of the public in fighting hate crimes and hate speech.

In order to provide for proper monitoring of the degree to which the police observes professional standards, the country has opted for the model of an external mechanism for controlling the work of the police, i.e. the Unit for Investigation and Prosecution of Crimes Committed by Persons with Police Authority and Members of the Prison Police, which became operational in December, 2018. In addition, a separate organizational unit was established at the Ombudsman office, as a civic control mechanism.

Furthermore, the Law on the Legal Status of a Church, Religious Community and Religious Group, enacted in 2007, was positively received by the international organizations, since it facilitates the registration of religious organizations of the members of national minorities. The changes and amendments to the Law on Audio and Audiovisual Media Services (2018) and the establishment of nonprofit radio stations, increased the support of the media broadcasting in minority languages and improved the promotion of a pluralistic media environment. At the same time, it provided for an efficient and effective implementation of the Law on the Use of Languages at central and local level.

The latest Report submitted by RNM shows that appropriate legal solutions have been introduced, so as to properly respond to the recommendations by the Advisory Committee. However, having good legal solutions is only the first step, which has to be followed by proper implementation of those solutions.

62 Law on Audio and Audiovisual Media Services, Official Gazette of RM, number 184/2013, 13/2014, 44/2014, 101/2014, 132/2014, 142/2016, 132/2017, 168/2018, 248/2018 and 27/2019 and Official Gazette of RNM, number 42/2020.

63 Ibid.

ANALYSIS OF THE 2019 ANNUAL REPORT OF THE OMBUDSMAN REGARDING THE OBSERVANCE OF HUMAN RIGHTS AND NONDISCRIMINATION

Pursuant to the constitutional provisions, the Ombudsman is supposed to protect the citizens and their rights from any violations committed by state institutions and other entities and organizations with public authority. The legal competencies of the Ombudsman, as defined in the Law on the Ombudsman⁶⁴ are to take actions and measures for the protection of the principles of nondiscrimination and appropriate and equitable representation of the members of the communities within various state authorities, bodies at the units of local self-government and public institutions and services. In 2019, the Ombudsman received and responded to 60 citizens complaints related to discrimination and appropriate and equitable representation of citizens in the public sector.

In 2019, the Ombudsman received and responded to 60 citizens complaints related to discrimination and appropriate and equitable representation of citizens in the public sector.

In 2019, the Ombudsman has found that the overall number of complaints is reduced, however, it was noted that the number of complaints due to harassment at the place of work (mobbing) have increased twofold.

Statistically, out of a total of 60 complaints filed with the Ombudsman office, 25 were related to harassment at the workplace, followed by 11 complaints related to discrimination on the grounds of ethnicity, with the rest of them due to some other grounds for discrimination.⁶⁵

Most of the complaints of harassment at the workplace originate from the Ministry of Interior and relate to unlawful reassignments, by means of orders, instead of Reassignment Decisions; reassignments for time periods that exceed the legally prescribed duration and refer to reassignment to inappropriate job positions that are quite often much lower in the overall hierarchy of the Ministry, in comparison with the current positions regulated by the existing Assignment Decisions of the applicants.

Nevertheless, besides all identified violations of the rights of the employees at the Ministry, and consequently besides all the provided recommendations and conclusions by the Ombudsman, those recommendations have been accepted only in one single case, after which, the high ranking police officer was assigned to an appropriate job position and awarded with an assignment decision that corresponds to his title and working experience.

In 2019, the Ombudsman continued with taking measures in relation to the received complaint for alleged discrimination on the grounds of ethnicity, during the administering of the psychological tests, as part of the process of hiring new professional soldiers in the Army of the Republic of North Macedonia. After completing those activities, which also included monitoring of the psychological testing process for

64 Law on the Ombudsman, Official Gazette, number 60/2003, 114/2009, 181/2016, 189/2016 and 35/2018.

65 Ombudsman of RNM. (2019). Annual report on the degree of provision, observance, promotion and protection of human rights. <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>. <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>

the employment of professional soldiers, the Ombudsman found no discrimination on the grounds of ethnicity as part of the psychological testing. Still, after monitoring the process, the Ombudsman established that the psychological tests are based on an obsolete methodology and it is not administered electronically using computers, and therefore there is a threat of being partial, since such tests cannot eliminate the human factor. Therefore the Ombudsman proposed taking of certain measures, so as to ensure the use of standardized instruments during the psychological tests, as well as introducing digitalized tests, so as to be able to avoid any influences by the human factor when making decisions and grading the tests and changes to the current secondary legislation that regulates the process of hiring candidates for officers and lieutenants, professional soldiers and civilian personnel in the Army.⁶⁶ This recommendation was accepted by the Ministry of Defense.

Acting upon a complaint filed by the association “Polio Plus” from Skopje, regarding discrimination on the grounds of disability, the Ombudsman found that the rights of disabled people have been violated in the service field, that is, during vehicle registration procedures. Namely, the Ombudsman established a violation of the rights of persons with disabilities, as well as violation of the medical conditions specifically listed in Article 65 of the basic Law on Public Roads from 2008, which may be interpreted as discrimination on the grounds of mental and physical condition, because the Law speaks only of diagnosis, but not of conditions that may be of variable nature. Due to this conclusion, the Ombudsman recommended to the Ministry of Transport and Communications to harmonize the text of the Law on Public Roads with the Convention on Persons with Disabilities and also to organize a public debate and a meeting with the relevant associations that represent the interests of persons with disabilities. This recommendation was accepted by the Ministry of Transport and Communications.

All of the above, leads us to the conclusion that in 2019, in comparison with the previous year, the number of complaints filed with the Ombudsman office on the grounds of discrimination has been reduced. Nevertheless, besides the reduced number of these types of complaints, one has to note the increase in the number of complaints filed due to harassment at the workplace. Acting upon these complaints, the Ombudsman provided some recommendations for the Ministry of Interior and the Ministry of Finance, which in turn ignored them, with only one exception in the case of the MoI, which is insignificant, bearing in mind the overall number of established violations by the Ombudsman.

Due to these conditions, the Ombudsman recommended to the Ministry of Labor and Social Policy to take urgent actions, so as to change the Law on Protection against Harassment at the Workplace, mainly by precisely regulating the persons who are allowed to assume the role of mediators in the proceedings and defining the deadline for submitting applications and conducting a mediation procedure, as well as defining the role of the State Labor Inspectorate in the implementation of the Law etc.

⁶⁶ Ibid, page 51.

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